



Montana Legal Services Association

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SENATE JUDICIARY

Exhibit No. 3

Date: 3-7-17

Bill No. SB 239

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MEMO

To: Senate Judiciary Committee
From: Amy Hall, attorney with MLSA *AH*
RE: SB 239 – revising landlord-tenant laws concerning abandonment
Primary sponsor: R. Webb
Date: February 21, 2017

Good morning, Mr. Chairman and members of the Committee:

My name is Amy Hall. I am an attorney with Montana Legal Services Association, a nonprofit organization that provides civil legal assistance statewide to Montanans living in poverty. I have provided legal representation to low-income renters throughout Montana for 14 years.

I am here on behalf of MLSA to express concerns about SB 239. This bill, if passed, would result in the re-establishment of debtors' prisons, which were abolished in this country almost 200 years ago.

This bill provides that if a tenant moves out of the rental without notice to the landlord, the landlord can charge the tenant criminally with theft, if either is true: 1) the tenant owes past due rent; or 2) the tenant owes rent for the remainder of the term of the rental agreement. The possible sentence for a person who is convicted of theft includes jail or prison time (§ 45-6-301, MCA).

IF SB 239 passes, the tenant in each of these examples could be charged with theft and sent to jail or prison:

1. Granny moves out 3 months into her 12-month lease because the landlord wrongfully refuses to accommodate her disability by allowing an assistance animal. If HB 239 passes, Granny could be charged criminally even if her rent was paid in full for the 3 months she lived there, because she didn't pay for the remaining 9 months on her lease.

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Even if the landlord was able to rent Granny's place to a new tenant a few days after Granny moved out, SB 239 would still allow the landlord to charge Granny with theft, while the landlord was collecting the 9 months' rent remaining on Granny's lease from the new tenant.

As a result of the theft charge, Granny could be ordered to pay restitution to the landlord, in addition to the jail time. If restitution is ordered, then the landlord would be effectively collecting double rent for the 9 months after Granny moved out.

2. Joe rents on a month-to-month lease. For the last six weeks, Joe has given oral and written notice to his landlord that the furnace in the rental isn't working. Joe's utility bills are double the usual amount because he's using electric space heaters to heat the rental for his family. The landlord is wintering in Arizona and has done nothing to fix the furnace.

Joe's family moves out without giving notice, because they can't afford the utilities. SB 239 would allow the landlord to file theft charges against Joe if he owed any past due rent -- even just \$20.00, the bill doesn't specify an amount that has to be past due -- and also Joe would owe the landlord 30 days more in rent, since the law requires a month-to-month tenant to give 30 days notice of moving, and Joe didn't give notice.

MLSA takes the position that a rental agreement imposes obligations on both tenants and landlords. Of course the tenant should pay the rent, just as a landlord should comply with the landlord's obligations to make repairs. It is noteworthy that SB 239 provides extreme remedies to a landlord for a tenant's nonpayment of rent, but does not provide comparable remedies to a tenant who has been wronged by a landlord. If the landlord is not providing heat in the winter, then shouldn't the tenant who keeps paying his rent in full be able to file criminal charges against the landlord? The landlord is accepting payment from the tenant for services that the landlord is not providing.

A landlord already has remedies under the law for when a tenant moves out owing rent. The landlord can sue the tenant for the money owed, and if a money judgment is awarded, can collect that judgment against the tenant by garnishing the tenant's wages or seizing the tenant's property. Under existing law, landlords have the same remedies as other creditors, such as credit card companies and health care providers or hospitals, when someone owes them money. But SB 239 would change that, and would give landlords more favorable treatment than other creditors.

Further, SB 239 would allow the landlord to automatically charge the departing tenant with the months remaining on the tenant's lease if the tenant moves out early. The Montana Supreme Court has already ruled that practice unconscionable. In *Summers v.*

Crestview Apartments, 2010 MT 164, 357 Mont. 123, 236 P.3d 586, the Court refused to enforce the provision in the lease which allowed the landlord to charge the departing tenant the “accelerated rent” when the tenant moves out before the lease ends – the landlord cannot automatically charge the tenant for all the months left on the tenant’s lease, and first must try to rent the premises to a new tenant, to mitigate the landlord’s losses. Under existing law, the landlord in this situation has the obligation to try to rent the rental to a new tenant, and can only charge the departing tenant with rent for the days left on the lease term where no new tenant was in the rental [§ 70-24-426, MCA (3), which is left unchanged in SB 239, lines 16-22] . Subsection (4) of SB 239 would change that, and would allow a landlord to automatically seek theft charges against a tenant who moves out before the end of the lease term.

Today, you cannot go to jail for failing to pay for a civil debt like rent or debts on credit cards, loans, or hospitable bills. If SB 239 passes, that would change – you could be sent to jail if you move out without paying your rent.

Nearly two centuries ago, the United States formally abolished the incarceration of people who failed to pay their debts. Do we want to return to the days of the debtors’ prisons? The practice of incarcerating people who owe debts wastes taxpayer money and resources by putting the burden on the criminal justice system (law enforcement officers, prosecutors, judges) to collect civil debts, and by jailing people who may never be able to pay their debts. If a tenant is jailed for nonpayment of rent, that may make it harder for the landlord to collect any money from the tenant. The criminal penalties proposed by SB 239 would impose direct costs on the government and would further destabilize the lives of poor people who may be struggling to pay their debts and leave the criminal justice system behind.

Ultimately, debtors’ prisons are not only costly to taxpayers, but they are also illegal. Arresting someone because she cannot afford to pay her rent violates the constitutional guarantees of due process and equal protection under the law.

Conclusion

MLSA urges the defeat of SB 239. No one wants to return to the days of debtors’ prisons. Low-income people who move out of a rental without notice should not face arrest for failing to pay past-due rent, or for failing to pay rent for the remainder of their fixed rental term if they move out early. The landlord can pursue collection of any unpaid rent through the existing avenues for collection, just as other collectors of civil debts.

Thank you for your consideration.